THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 18262 of 2000

Dated 01-08-2005

Between:

Sk.Sarwar Hussain, S/o Anwar Hussaiah,
R/o 1-4-21/11/12, Rajendranagar,
New Town, Mahabubnagar.

..... PETITIONER

AND

1 The Labour Cort-III, Rep. by its Presiding Officer,
Chadravihar Buildings, 4th Floor,
M.J.Road, Hyderabad.
2 The Depot Manager, A.P.S.R.T.C.,
Shadnagar, Mahabubnagar District.

.....RESPONDENTS

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO. 18262 OF 2000

ORDER:

This writ petition is filed by the workman being aggrieved by the award made in I.D.No.126 of 95 dated 30-10-1999 on the file of the Labour Court- III, Hyderabad.

It is the case of the petitioner that he was appointed as conductor in APSRTC in the month of March,1991. He had put in good record of service till he was illegally removed from service. According to him, while he was conducting the bus on the route Kakkanur to Shadnagar on 23-6-1983, a check was exercised at stage No.6 and he was issued with a charge memo alleging certain cash and ticket irregularities. Basing on the check report, a charge sheet was issued. The petitioner submitted his explanation denying the charges and explaining the circumstances under which those irregularities were detected. Having not satisfied with the explanation, a detailed domestic enquiry was ordered. The enquiry officer submitted a report holding that the petitioner is guilty of the charges. The disciplinary authority without properly appreciating the facts and circumstances of the case passed an order of removal from service after completing formalities on 4-11-1993. Aggrieved by the same, the petitioner preferred an appeal before the competent authority and the same was rejected on 28-2-1995 and further review petition was also rejected on 10-5-1995. Therefore, having no other option to the petitioner, raised a dispute and filed claim petition under Section 2 A(2) of Industrial Disputes Act before the Labour Court -III, Hyderabad, which was taken on file as I.D.No.126 of 1995 . It is also contended that the labour court also without properly appreciating the evidence and without considering as to proportionality of the punishment, dismissed the application filed by the petitioner under Section 2 A (2) of the Act and no relief was granted, hence, this writ petition.

A detailed counter affidavit has been filed by the respondent denying the allegations made by the petitioner and supporting the award passed by the Labour Court-III, Hyderabad. Further it is stated that the statement made by the petitioner was inconsistent and the misconduct on the part of the petitioner was proved in full, therefore, question of exercising powers under Section 11-A of the Industrial Disputes Act by the Labour Court does not arise. The award passed by the Labour Court does not suffer from any infirmities requiring interference by this court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the award passed by the Labour Court and other material made available on record.

At the outset, I am of the opinion that the Labour Court has not committed any error in coming to the conclusion that the petitioner was guilty of the charges. However, I am of the opinion that the Labour Court ought to have examined as to proportionality of the punishment in the given circumstances of the case. Admittedly, though petitioner was appointed in the month of March,1991 till his removal from service he had good track of service record and this being the first misconduct, the Labour Court while exercising its powers under 11-A of the Industrial Disputes Act ought to have granted the relief of reinstatement afresh at least. In this case, the petitioner himself admitted in spot explanation that he collected fare from six passengers and the said six passengers gave a joint statement that they boarded in to the bus at Kakkanur and alighting at Keshampet, without tickets. They attributed against the petitioner that they paid the requisite fare but the petitioner failed to issue tickets to them. However, the petitioner stated that he was in the act of issuing tickets at the time of check as the alleged six ticketless passengers gave him Rs.100/- and Rs.50/- denominations notes towards the fare. There was delay in issuing tickets. However, the enquiry officer, disciplinary authority and the Labour Court found that the petitioner had taken inconsistent stand at various levels of the enquiry. If his version is true, there was no necessity for the petitioner to close the S.R. at the stage No.6 itself. In view of the same, the finding of the enquiry officer, disciplinary authority and Labour Court that the charges are proved cannot be found fault with. However, admittedly there was no past misconduct against the petitioner. This being the first misconduct, the petitioner deserves to be given an opportunity to serve the corporation. In view of the same, the Labour Court has not properly exercised the powers vested under Section 11- A of the Industrial Disputes Act.

The petitioner is entitled for relief of fresh appointment as conductor which means that the petitioner is not entitled for continuity of service, back wages and attendant benefits.

In the result, the respondents are directed to reinstate the petitioner as fresh conductor. The service rendered by the petitioner earlier shall not be counted for any purpose including seniority and other attendant benefits.

The writ petition is allowed to the extent indicated above. No order as to costs.

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C.V.RAMULU, J

01-08-2005

Stp